

CURRENT DEVELOPMENTS

Responsibility-sharing for refugees (2)

Can global solutions avoid contributing to the legal production of superfluity?

DANA SCHMALZ — 9 September, 2016



I have argued in the previous post, how states' regulation of borders and the global question of responsibility sharing relate: Not only does the securization of borders in one place shift responsibility for refugees to other states. Strategies of containment have shaped today's international structure of protection much more generally, including the growing role of humanitarian actors and the corresponding expansion of humanitarian reason in reactions to displacement. These dynamics tend to construe refugees as "superfluous" in at least two ways: Firstly, the more access to territory is restricted, the more the *need* for such access becomes in

itself problematic. Historically, it is the emergence of territorial borders and limitations to free movement, which give rise to the very concept of the refugee. But also on the level of today's regulation of displacement, the restriction of access forms the ways in which forced migration concentrates in few places and directions. On a different level, the humanitarian reason in refugee protection contributes to a "production of superfluity", in creating and relying on circumstances of dependence, in which persons are foremost recipients of aid.

Against this background, it appears important that the issue of responsibility-sharing is on the agenda for the upcoming UN Summit for Refugees and Migrants. The adoption of a Global Compact on Responsibility Sharing for Refugees is envisaged, and the state's declaration will contain at least some references. Sure, there has been skepticism as to the willingness of heads of states to actually work towards real changes: Compared to the zero draft of the declaration, the draft following the high-level meeting already exhibits more hesitant formulations regarding the issue of responsibility-sharing (cf. para. 6.v. of the zero draft as compared to 4.5 of the draft). Also the draft for the Global Compact has been criticized by refugee law scholars as remaining too vague and lacking substantial commitments. My focus here, however, will not be to assess prospects for September 19th, but to discuss how international agreements could actually be able to improve conditions of refugee rights and what pitfalls might thereby arise.

**Putting the issue of responsibility-sharing at the center:
proposals for global solutions**

In that regard, two prominent proposals regarding “global solutions” for refugees are worth considering: James Hathaway has long emphasized the issue of responsibility-sharing, arguing that the existing legal framework of the 1951 Convention contains guidelines for international cooperation in refugee protection, and that the failure lies not in the lack of rules but in their implementation. Hathaway, in proposing “a global solution to a global refugee crisis”, maintains that successful governance of refugee protection must include more states, act in a more forward-looking manner, and allocate a greater role to international administration through UNHCR, which would make refugee status determination more effective. Hathaway’s five-point plan thereby builds on the idea of a “common but differentiated responsibility” of states for refugees, involving both financial burden-sharing, and responsibility-sharing in the sense of accepting persons through agreed quotas for resettlement.

In a similar direction points Alexander Aleinikoff’s Alexander Aleinikoff’s proposal for a Global Action Platform and Fund for Forced Migrants. While he does not view the 1951 Convention to contain relevant guidance for the problem of responsibility-sharing, Aleinikoff shares the thrust of creating institutional mechanisms that allow planning ahead instead of the often stagnant responses of the international community to newly emerging or intensifying refugee situations. In particular, his proposal concurs with the idea to give more weight to centralized registration of refugees by UNHCR and a subsequent distribution through agreed resettlement quota. Aleinikoff also points to the steps that international institutions are beginning to take for improving the global structures of protection, in particular the creation of a “Solution Alliance”, which strives to work towards

models of assistance that focus on refugee self-reliance and support hosting communities.

In light of the previous considerations about law's production of superfluity, two aspects of those proposals appear central for a critical discussion: the stand they take on what actually forms the object of responsibility-sharing, and the impact that a centralization of responses has on the perceived role of border regulations and mobility of refugees.

Responsibility-sharing without a fixed object

The more than 65 million persons forcibly displaced world-wide constitute the usual reference point for all considerations of responsibility-sharing. This number is determined from two sides: from the causes for persons becoming refugees, and from causes of persons remaining refugees. While the regular postulation to “address root causes” of displacement (cf. the draft declaration, 1.12) points to the former – the side of persons becoming refugees, we must also consider how legal arrangements impact, directly and indirectly, on the latter – the possibility to not remain a refugee. In that regard, the two forms of sharing responsibility that proposals for global solutions contain, financial contributions and accepting persons by way of resettlement or direct access, appear crucially different: While financial contributions are of course needed in the immediate situation, a focus on financial contributions ultimately tends to uphold the current structural problems including the humanitarian reason in protection, which will at the same time keep persons in the status of refugees.

It is essential, in other words, to move beyond a perception that responsibility-sharing for refugees would

concern a static mass to be distributed, i.e. a definite number of persons for whom the responsibility is to share. Rather, the ways law frames conditions of movement and integration contribute themselves to the object of responsibility-sharing itself. This also relates to the wider communicative aspects that border regulations and the willingness to accept refugees have between different parts of the world: Claims for local integration of refugees are likely to remain futile as long as refugees are concentrated in few places in the Global South, and as long as those states receiving the vast majority of refugees feel left alone with the task of integration. Whether refugees can become valuable to “economic and social development in their country of refuge and destination”, as in the multi-stakeholder hearing preparing the UN summit it was determinedly pointed out, will depend foremost on the possibility of persons to make choices about their country of refuge and destination – and thereby to take part in “distributing” the responsibility for refugees.

Centralization of responses – and the relevance of concrete border situations

This relates to the question, how endeavors for global solutions deal with the aspect of mobility: The principle of responsibility-sharing on the level of inter-state relations corresponds to the question of mobility on the level of refugees themselves and their relationship with states. Refugees in that sense take part in describing and shaping the global picture of protection in that they make decisions about where to go and react to unbearable conditions of shelter in one place by moving to another. At the same time, the restriction to mobility forms a key aspect of the refugee’s situation. Already at the very outset, “we are dealing”, to

return to the quote of Arendt, “with a problem not of space but of political organization” (OT, 294).

Regarding legal efforts to improve the situation of refugees, the focus on mobility concerns firstly the way provisions for resettlement includes the possibility of persons to decide about destinations. More importantly, however, we must ask how a focus on centralization and the choices of financial contributions and resettlement as “currencies” tend to legitimize states’ efforts to secure borders and restrict mobility. The draft for the Global Compact on Responsibility Sharing for Refugees in that regard subsumes under the necessary measures for improving responsibility-sharing also the commitment to prevent not only the “need to flee” but also “need to move onwards” (point 9). Looking at the struggles of migrants exactly regarding the possibility to move onwards, this proposed commitment appears to reinforce rather than tackle the dominant strategies of containment as part of the problem.

I don’t think that centralized legal measures inescapably contribute to the “legal production of superfluity”. In some ways, international agreements might work to explicitly address mobility rights of refugees (cf. for an argument about a new version of Nansen Passports here). Yet they will not be sufficient alone, and they will certainly not “resolve” the issue. In that sense, the notion of *global solutions* highlights problems in both parts: The framing as *solutions* tends to abide by the logic that refugees form a temporary problem that one day will be resolved. From the complex intertwinement that the notion of the refugee has with the legitimacy framework of nation states and political membership more generally, this horizon of solution itself is questionable. The *global* in turn comes at the risk of shifting

attention from concrete border situations to a more abstract commitment to design responses. It might be the concreteness of the border situation, however, which allows framing the question of refugees not as a humanitarian but as a political one.

This is the second part of two posts on the question of global responsibility-sharing. A [first post](#) has discussed the current dynamics in international refugee protection regarding the problem of responsibility-sharing and humanitarian reason.

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